

(4)
NO. 96-1291

Supreme Court, U.S.

FILED

JUN 20 1997

OFFICE OF THE CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1997

DOLORES M. OUBRE

Petitioner,

vs.

ENTERGY OPERATION, INC.

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED FEBRUARY, 4, 1997

CERTIORARI GRANTED APRIL 21, 1997

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APPENDIX A

**RELEVANT DOCKET ENTRIES
U.S. DISTRICT COURT,
EASTERN DISTRICT OF LOUISIANA**

Proceedings include all events. APPEAL
 2:95cv3168 Oubre v. Entergy Operations,
 et al TERMED MAG-4

09/26/95 1 COMPLAINT (3 summons(es issued) (kh)
 [Entry date 09/27/95]

11/20/95 6 ANSWER by defendant Entergy Operations
 to complaint by plaintiff Dolores M. Oubre [1-1]
 (kh) [Entry date 11/21/95]

04/30/96 26 MOTION by defendant Entergy Operations for
 summary judgment UNDER SEAL to be heard
 before Judge Berrigan at 9:30 5/15/96 (kh) [En-
 try date 05/02/96] [Edit date 05/02/96]

05/16/96 29 Motion by plaintiff Dolores M. Oubre and
 ORDER for leave to file opp to mtn for sum
 jgm under SEAL by Judge Ginger Berrigan
 Date Signed: 5/17/96 (kh) [Entry date 05/20/96]

05/29/96 34 JUDGMENT: to dismiss case in favor of dfts
 Entergy Operations Inc, Jim Rooney and Dave
 Shipman & agst Pla, Dolores M. Oubre,
 dismissing pla's cmp w/prej, each pty to bear
 own costs by Judge Ginger Berrigan Date sign-
 ed: 5/28/96. . . CASE CLOSED . . . (kh)

06/19/96 35 Notice of appeal by plaintiff Dolores M. Oubre
 from Dist. Court decision Jgm of 5/23/96 (kh)
 [Entry date 06/27/96]

APPENDIX B**RELEVANT DOCKET ENTRIES
U.S. FIFTH CIRCUIT COURT OF APPEALS**

06/27/96 Civil rights case docketed NOA filed by appellant Dolores M. Oubre [96-30654] ROA due on 7/12/96 (shw)

07/05/96 Record on appeal filed. Pleadings: 1 . [96-30654] ROA ddl satisfied (ccb)

08/15/96 Appellant's Brief filed by Appellant Dolores M. Oubre

08/15/96 Record excerpts filed by Appellant Dolores M. Oubre

08/27/96 Record Excerpts made sufficient by Appellant Dolores M. Oubre [96-30654] Sufficient Record Excerpts ddl satisfied (ccb)

09/13/96 Appellee's brief filed by Appellee Energy Operations

09/13/96 Record excerpts filed by Appellee Entergy Operations

10/04/96 Briefing Complete.

11/06/96 Opinion filed. Issue Mandate due on 11/27/96.

11/06/96 Judgment entered and filed

APPENDIX B (continued)**RELEVANT DOCKET ENTRIES
U.S. FIFTH CIRCUIT COURT OF APPEALS
(continued)**

02/26/97 Supreme Court notice that petition for certiorari was filed on 02/18/97 by Appellant Dolores M. Oubre. Supct No.: 96-1291 (ccb)

04/24/97 Supreme Court order received granting petition of certiorari [554176-1] filed by Appellant Dolores M Oubre on 04/21/97. [96-30654] (ccb)

04/28/97 Certified record on appeal transmitted to United States Supreme Court. Volumes: 1 [86-30654] (ccb)

9478da

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DOLORES M. OUBRE * CIVIL ACTION
 *
VERSUS * NUMBER: 95-3168
 *
ENTERGY OPERATIONS, *
INC. * SECT. C MAG. 4
 *
 * JURY TRIAL DEMAND

COMPLAINT

NOW INTO COURT, through undersigned counsel, comes DOLORES M. OUBRE, a person of the full age of majority and resident of the Parish of Jefferson, State of Louisiana, who respectfully represents:

I.

Made defendants herein are Entergy Operations, Inc., a domestic corporation authorized to do and doing business in the State of Louisiana; Jim Rooney, in his official capacity as the Supervisor of Outage Planning for Entergy Operations Inc. at Waterford III Facility located in Killona, Louisiana; and Dave Shipman in his official capacity as Manager of Planning and Scheduling for Entergy Operations, Inc. the Waterfore III Facility located in Killona, Louisiana.

II.

This civil action is brought on behalf of the claimant, a forty-one (41) year old female, for money damages to redress injury caused to the claimant by the deprivation of her rights and privileges as secured by Title 29 U.S.C. § 621-634, the Age Discrimination of Employment Act of 1967 ("ADEA"), as amended in 1978 and 1991.

III.

Further, this action is brought pursuant to Louisiana Revised Statute Article 23:972 and 51:2231, et seq. This Court has jurisdiction under Title 28 United States Code, § 1343.

IV.

Claimant was hired to begin work as a Clerk B for the defendant in June of 1987. By 1995, claimant had been promoted to an Assistant Scheduler at the Waterfore III Facility located in Killona, Louisiana.

V.

Defendant, Entery Operations, Inc., employed greater than eight (8) employees during all times pertinent hereto.

VI.

During her tenure with Entergy Operation, Inc., the claimant performed her duties loyally and capably.

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VII.

On January 16, 1995, the claimant received an evaluation rank "9" from Jim Rooney, Planning & Scheduling Supervisor, and Dave Shipman, Planning & Scheduling Manager, and was given the option by Jim Rooney, Planning & Scheduling Supervisor, and Dave Shipman, Planning & Scheduling Manager, of accepting a severance package or an action plan.

VIII.

The claimant was required to make a decision within fourteen (14) days, was not given the opportunity to change her mind once decided and was told that her performance rating would not change even if she successfully completed her action plan.

IX.

The claimant selected the option of the severance package and her job responsibilities were then disbursed to the remaining assistant schedulers all of them younger than the claimant.

X.

In spite of being qualified for her position, the claimant was constructively discharged because of her age in violation of the Age Discrimination of Employment Act and violation of State Law.

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XI.

Claimant satisfied her procedural prerequisite of timely filing a Charge of Discrimination with the Equal Employment Opportunity Commission. Further, plaintiff received a right to sue letter from the Commission upon request and has filed this complaint timely.

XII.

Defendant intentionally and willfully deprived the claimant of her federal rights and privileges by violating the provisions of the Age Discrimination of Employment Act.

XIII.

As a result of the intentional and willful acts of the defendant in unlawfully discharging the claimant, the claimant is entitled to an award of actual damages, back pay including but not limited to the salary claimant could have received if not for termination, salary increases, bonuses, vacation and sick leave benefits, liquidated damages, general damages including pain and suffering, mental anguish and attorney's fees.

XIV.

Claimant requests a trial by jury on all issues triable by same.

WHEREFORE, claimant, DOLORES M. OUBRE, prays that the defendant be cited to appear and answer this complaint and after due proceedings be had, there be judgment

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herein in favor of the claimant, DOLORES M. OUBRE, and against the defendant, ENTERGY OPERATIONS, INC., for actual damages, back pay, liquidated damages, compensatory damages, attorney's fees together with all costs and legal interests. Claimant further prays for trial by jury on all issues triable by same.

Respectfully submitted,

DONELON, HAYNIE & DONELON

By: s/s Barbara G. Haynie,

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APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

DOLORES M. OUBRE	* CIVIL ACTION
	*
VERSUS	* NUMBER: 95-3168
	*
ENTERGY OPERATIONS,	*
INC.	* SECTION "C"
	*
	* MAGISTRATE
	* DIVISION 4
	*

**ENTERGY OPERATIONS, INC.'S
ANSWER AND DEFENSES**

Defendant Entergy Operations, Inc. ("EOI" or "defendant"), through undersigned counsel, responds to the Complaint filed by plaintiff, Dolores M. Oubre ("plaintiff"), as follows:

FIRST DEFENSE

In specific response to the numbered and unnumbered paragraphs of the Complaint, EOI states:

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1.

EOI denies the allegations contained in the un-numbered paragraphs of the Complaint.

2.

In response to Paragraph I of the Complaint, EOI admits that Entergy Operations, Inc. is a Delaware corporation authorized to do and doing business in the State of Louisiana, James P. Rooney is Supervisor for Outage Planning for EOI at the Waterford 3 facility located in Killona, Louisiana ("facility"), and David L. Shipman is Manager of Planning and Scheduling for EOI at the same facility. Defendant EOI denies all remaining allegations contained in Paragraph I of the Complaint.

3.

Defendant EOI denies the allegations contained in Paragraph II of the Complaint.

4.

Defendant EOI denies the allegations contained in Paragraph III of the Complaint.

5.

In response to Paragraph IV of the Complaint, EOI admits that plaintiff began working as a Clerk B for EOI in June, 1987 and that in early 1995, prior to her voluntary resignation, plaintiff's position was Assistant Outage

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Scheduler at the facility. Defendant EOI denies all remaining allegations contained in Paragraph VII of the Complaint.

6.

In response to Paragraph V of the Complaint, Defendant EOI admits that it employed more than eight (8) employees during 1995.

7.

Defendant EOI denies the allegations of Paragraph VI of the Complaint.

8.

In response to Paragraph VII of the Complaint, defendant EOI admits that, on January 16, 1995, James P. Rooney, the Planning and Scheduling Supervisor, and David L. Shipman, the Planning and Scheduling Manager met with plaintiff, informed her that she had an evaluation ranking of 9 and that she had the options of continuing employment based on an action plan or voluntarily choosing a severance package. Defendant EOI denies all remaining allegations contained in Paragraph VII of the Complaint.

9.

Defendant denies the allegations of Paragraph VIII of the Complaint.

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10.

In response to Paragraph IX of the Complaint, defendant EOI admits that plaintiff voluntarily chose the option of the severance package. Defendant EOI denies all remaining allegations contained in Paragraph IX of the Complaint. Defendant EOI specifically avers that plaintiff signed a release waiving all claims pertaining to her employment and voluntary resignation, including those raised in plaintiff's Complaint.

11.

Defendant EOI denies the allegations contained in Paragraph X of the Complaint.

12.

In response to Paragraph XI of the Complaint, defendant EOI admits that plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") naming EOI as respondent. Defendant EOI denies all the remaining allegations contained in Paragraph XI of the Complaint.

13.

Defendant EOI denies the allegations contained in paragraph XII of the Complaint.

14.

Defendant EOI denies the allegations contained in Paragraph XIII of the Complaint.

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15.

Paragraph XIV of the Complaint requires no answer; if any answer is required, defendant EOI denies the allegations of Paragraph XIV of the Complaint.

SECOND DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

THIRD DEFENSE

Jurisdiction does not lie with this court because plaintiff has failed to satisfy all of the jurisdictional prerequisites to filing a suit in federal court under the Age Discrimination in Employment Act (ADEA).

FOURTH DEFENSE

Plaintiff's claims are barred by failure to exhaust administrative prerequisites to suit under the federal and/or state statutes cited in the Complaint.

FIFTH DEFENSE

Plaintiff received consideration for and signed a separation agreement releasing and waiving all claims stated in her Complaint. Plaintiff's claims are barred by the doctrines of waiver and/or equitable estoppel.

SIXTH DEFENSE

Defendant EOI made decisions with respect to plain-

tiff's employment based on reasonable factors other than age.

SEVENTH DEFENSE

Plaintiff's claims are barred in whole or in part by failure timely to adhere to administrative prerequisites to suit under the federal and/or state statutes cited in the Complaint.

EIGHTH DEFENSE

Plaintiff's claims are barred in whole or in part because plaintiff has failed to mitigate her alleged damages.

NINTH DEFENSE

Liquidated damages are not available under the state statutes cited in the Complaint and/or are not available in an ADEA action when the employer's conduct was not willful; therefore, plaintiff has failed to state a claim upon which the relief of liquidated damages may be granted.

WHEREFORE, defendant Entergy Operations, Inc. prays that its Answer be deemed good and sufficient, and that, after due proceedings are had, that there be judgment in its favor and against Dolores M. Oubre, dismissing plaintiff's Complaint, with prejudice, at all costs to plaintiff, including attorney's fees, and for all further general and equitable relief to which defendant EOI may be entitled.

MONROE & LEMANN

Anne L. Lewis, Bar No. 18304

By /s/ Anne L. Lewis

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**ATTORNEYS FOR DEFENDANTS,
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ENTERGY OPERATIONS, INC.,
JAMES P. ROONEY AND
DAVID L. SHIPMAN**

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CERTIFICATE

I certify that a copy of the foregoing Entergy Operations, Inc.'s Answer has been served upon counsel of record:

Barbara G. Haynie
Donelon, Haynie & Donelon
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Suite 1010
Metairie, Louisiana 70002
Counsel for Dolores M. Oubre

by depositing same in the United States mail, postage paid
and properly addressed, this 20th day of November, 1995.

/s/ Anne L. Lewis

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APPENDIX E

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DOLORES M. OUBRE	CIVIL ACTION
VERSUS	NUMBER: 95-3168
ENTERGY OPERATIONS, INC.	SECTION "C" (4)

FILED
MAY 23 1996

ORDER AND REASONS

This matter comes before the Court on motion for summary judgment filed by the defendant, Entergy Operations, Inc. ("Entergy"). Having considered the record, the memoranda of counsel and the law, the court has determined that the summary judgment should be granted for the following reasons.

The undisputed facts reveal that the plaintiff, Dolores M. Oubre ("Oubre") worked for the defendant, Entergy Operations, Inc. ("Entergy") as a salaried employee at the Waterford Steam Electric Generating Station. In 1993, she received a poor work performance ranking from Entergy. All employees who received such rankings were offered the option of accepting a voluntary severance package and signing

DATE OF ENTRY MAY 23 1996

a release of claims or improving their performance by meeting the criteria of individually developed action plans. She was informed of her ranking and her options at a meeting with James Rooney ("Rooney") and David Shipman on January 17, 1995. She was given a letter containing the terms of the severance package and release and two weeks within which to make her decision.

On January 31, 1995, the plaintiff advised Rooney of her decision to accept the voluntary severance package and she signed the release. The release reads in relevant part as follows:

I, Dolores M. Oubre, knowingly, voluntarily, and for valuable consideration agree to waive, settle, release and discharge any and all claims, demands, damages, actions, or causes of action occurring on or before the date of the execution of this Release, whether known or hereafter discovered, that I may have against Entergy Operations, Inc., its parent corporation, subsidiaries, affiliates, officers, directors, employees, agents, and legal representatives and their respective successors, heirs, and assigns ("the Company"), which in any way relate to my employment by or my separation from the Company.

I acknowledge that I was provided with a copy of this Release, that I was advised to discuss this Release with my lawyer, and that I was given no less than 14 days within which to consider signing this Release. I have thoroughly reviewed this Release and understand that, to the extent I have any claims covered by this Release, I am waiving

potentially valuable rights by signing below. My execution of this Release is free and voluntary and was not procured through duress, coercion, or undue influence.

I UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT BY SIGNING THIS RELEASE, I AM OBTAINING ADDITIONAL MONIES AND BENEFITS FROM THE COMPANY IN THE FORM OF A VOLUNTARY SEVERANCE PACKAGE TO WHICH I WOULD NOT BE OTHERWISE ENTITLED. I UNDERSTAND, ACKNOWLEDGE, AND AGREE TO ALL THE TERMS OF THIS AGREEMENT.

The plaintiff has admitted in deposition that she understood the terms of the severance package, consulted with two attorneys about the effect of the release, received all monies under the severance package and has returned no money to Entergy.

Based on these undisputed facts, Entergy argues that the plaintiff has waived her right to bring this action because she signed the release and later ratified it by failing to return the benefits she received as a result of the severance. *Wamsley v. Champlin Refining & Chemicals, Inc.*, 11 F.3d 534 (5th Cir. 1993), *cert. denied*, 115 S.Ct. 1403 (1995). The plaintiff argues that the release did not comply with the requirements of the Age Discrimination in Employment Act ("ADEA") 29 U.S.C. §621 *et seq.* and its 1990 amendment, the Older Workers Protection Act ("OWBPA"), 29 U.S.C. §626(f) (A)-(H) and that the rationale adopted by the Fifth Circuit in *Wamsley* is erroneous.

The OWBPA provides that an individual cannot waive any right or claim under the ADEA unless the waiver is "knowing and voluntary" and provides that unless the waiver meets certain minimum criteria it may not be considered "knowing and voluntary." It is undisputed that the release signed by the plaintiff did not meet some of these criteria, including the requirements that specific reference to ADEA rights be made, that a waiting period of at least 45 days within which to consider the agreement be given and that a seven day period following execution to revoke the agreement be provided. 29 U.S.C. §626(f) (B), (F), (G).

The Fifth Circuit has specifically held however that the failure to meet the requirements of subsections (A) through (H) of the OWBPA does not render the agreement void of legal effect even though not "knowing and voluntary." *Wamsley*, 11 F.3d at 539. Rather, such waivers are only subject to being avoided at the employee's option. According to *Wamsley*, where the employee chooses to retain and not tender back the benefits paid in consideration for the agreement, she manifests an intention to be bound by the waiver and makes a new promise to abide by its terms. *Wamsley*, 11 F.3d at 540. See also: *Blakeney v. Lomas Information Systems, Inc.*, 65 F.3d 482 (5th Cir. 1995), cert. denied, 116 S.Ct. 1042 (1996).

The undisputed facts here fit squarely into the rule set forth in *Wamsley* and affirmed in *Blakeney*. This Court is not at liberty to disregard the law announced by the Fifth Circuit.

Accordingly,

IT IS ORDERED that the motion for summary judgment filed by the defendant, Entergy Operations, Inc. is hereby GRANTED.

New Orleans, Louisiana, this 23 day of May, 1996.

/s/ Ginger Berrigan

UNITED STATES DISTRICT
JUDGE

Notice sent to:

Barbara G. Haynie, Esq.
Kenneth Paul Carter, Esq.
Anne L. Lewis, Esq.
Rosemarie Falcone, Esq.

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APPENDIX F

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APPENDIX C

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 96-30654

Summary Calendar

DOLORES M. OUBRE

Plaintiff-Appellant,

VERSUS

ENTERGY OPERATION, INC.

Defendant-Appellee.

**Appeal from the United States District Court
For the Eastern District of Louisiana
(95-CV-3168-C)**

**BEFORE GARWOOD, JOLLY, and DENNIS, Circuit
Judges.**

PER CURIAM:¹

Dolores M. Oubre appeals from the district court's grant of summary judgment in favor of her employer, Entergy Operations, Inc., in her age discrimination action.

¹Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.4.4.

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We have reviewed the record and the parties' briefs and find no reversible error. Accordingly, the judgment is **AF-FIRMED** for the reasons enunciated by the district court.

APPENDIX G

CONFIDENTIAL

(1)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

DOLORES M. OUBRE
Plaintiff

VS

ENTERGY OPERATIONS, INC.
JAMES P. ROONEY, AND
DAVID L. SHIPMAN

Defendants

*

* CIVIL ACTION

* No. 95-3168

*

* SECTION "C"

*

*

* JUDGE BERRIGAN

*

* MAGISTRATE 4

COPY

Deposition of DOLORES M. OUBRE, taken on Friday,
April 12, 1996, at the offices of Entergy Services, Inc., 639
Loyola Avenue, Suite 2600, New Orleans, Louisiana 70113.

EXHIBIT A to Plaintiff's Opposition to Defendants Motion
for Summary Judgment filed in the District Court
Proceeding.

(7)

reporter can take it down. If I'm talking, will you please let
me finish my question before you start your answer?

A. Yes.

Q. And I'll try to let you finish your answer before
I ask the next question, although sometimes it doesn't work
that way. If you give an answer and you later think your
answer is incomplete or that it's incorrect, will you please
stop me and let me know that you gave an incorrect or in-
complete answer?

A. Yes.

Q. If you need to take any breaks, would you let me
know? And as long as there is not a question pending, we
can just break.

A. Okay.

Q. Are you currently on any medications or anything
like that that would stop you from giving your deposition
today?

A. No.

Q. Are you married?

A. No.

Q. How old are you?

A. Forty-two.

Q. When was your birth date?

(11)

told them that I felt like that was an injustice to me because I already was overloaded. And I felt like I bent over backwards helping them do anything that they needed to do. So I asked for a raise, and they declined. So I resigned.

Q. After leaving the hospital in 1981, where did you next go to work?

A. Straight — I left the hospital in '81, and two weeks later, I was hired at Waterford 3.

Q. Were you hired as — I guess at that time it would have been —

A. LP&L.

Q. It was still LP&L?

A. It was LP&L at that time.

Q. Were you hired as an employee of LP&L?

A. No. The first three months I was there, I was hired by AMPM, which is a temporary service. I interviewed with the personnel, and he hired me. No, I take it back. It wasn't AMPM. It was Bonjour Temporary Service. I interviewed with Clayton — I can't remember his last name. And he

(12)

hired me. And that particular day, he sent me to Bonjour to fill out the paperwork, and I started employment there the next day.

Q. You said you interviewed with Clayton. Now, was he an LP&L person?

A. Right, Clayton Taravella. Right. I worked for Bonjour for three months.

Q. And Bonjour —

A. — was a temporary service.

Q. So you went to work for Bonjour for a three-month period in 1981 after the —

A. Right.

Q. But you were working on site at Waterford; is that correct?

A. Right. Yes.

Q. What were you doing at Waterford?

A. I was working for Hal Canavier in the mechanical maintenance department.

Q. Do you recall what your title was?

A. Oh, God. I really don't.

Q. Do you recall what your job duties were?

A. Yeah.

Q. What were they?

A. At that time the plant was in the

(15)
change?

A. No. The only thing that changed at that time was now I was being paid by Ebasco rather than Bonjour.

Q. How long did you work with Ebasco?

A. Six and a half years.

Q. So you were with Ebasco from about 1981 until 1987?

A. Until June 1987.

Q. While you were with Ebasco, were you doing the same job function that you had just described to me?

A. No. I worked for Hal for approximately 2 1/2 years maybe. I mean, it was so long ago, it's hard for me to remember exact. After that I moved to Planning & Scheduling. There were greater opportunities in Planning & Scheduling. I had kind of gotten bored with the work that I was doing because it was repetitive. And I saw more opportunities for growth and advancement in Planning & Scheduling. And I just thought that I would be happier there.

So I spoke to one of the guys that was in there at that time, and I asked if there

(16)

were any openings or could he see if there was any possibility of me moving to Planning & Scheduling. And I was very lucky. Within a matter of weeks, I moved over to P & S.

Q. What was your title, if you recall, in Planning & Scheduling?

A. I really don't remember. I remember my titles when I became an LP&L person, because they stressed that for growth and development. But as a contractor, that — I really don't remember.

Q. That's fine. I mean, if you don't remember, just tell me you don't remember.

A. Yeah. I really don't remember.

Q. When you got to Planning & Scheduling, who were you reporting to?

A. Mike Woodard was the Planning & Scheduling manager, and I believe at that time Jim Rooney was the supervisor.

Q. What were you doing day in, day out in Planning & Scheduling?

A. In Planning & Scheduling, we did — we tracked all of the CIWAs, which was Condition Identification Work Authorizations. That was the paperwork that entitled people to

(18)

Q. Between the time you got to Planning & Scheduling and the time you became an LP&L employee, did your job duties change at all?

A. Yes.

Q. When did they change?

A. Oh, gosh. Let me think. No, I retract that. No, I don't think so. I think they stayed the same until I became an LP&L employee.

Q. Did you continue to report to the same people?

A. I reported to, I think — yeah. I think during that time — it's been so long. But I think during that time. I reported to Jim.

Q. When did you become an LP&L employee?

A. June '87.

Q. How did that happen?

A. There was a job that became available, and Jim offered it to me.

Q. What job was that?

A. A Clerk B position. I think at that time it was titled "Clerk B" position.

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Q. Was that in the Planning & Scheduling

department?

A. Yes.

Q. Were you paid hourly?

A. Yes.

Q. What were your job duties as a Clerk B?

A. I think at that time they basically remained the same. The CIWA program had changed from — the actual paperwork had changed, but the way we were doing business had not changed. We were still issuing all of the work authorizations. We were still tracking them. I think through — I don't think it changed until 1991 or '90, when I became a computer operator. Basically, the functions stayed the same up until then.

Q. So in '90 or '91, somewhere around there, you became a computer operator?

A. Yes.

Q. Was that a promotion for you?

A. Yes,

Q. Were you still being paid hourly?

A. Yes.

Q. How did you come to get this
(20)
promotion?

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A. I had showed interest in the computer, in the HP system. I had started just learning little things on my own. And I believe — I don't recall if I asked Jim if there was a position available or if a position had become available. And Jim offered it to me, and I was very eager to take it. So I accepted that position.

Q. As a computer operator, what were your job duties?

A. Operating the system, bringing up the system, watching the people on the system, maintaining the system altogether, doing backups, making sure that our data was always there, forwarding jobs, taking all of the jobs off of the printer, running reports, making sure that our system was secure, doing maintenance on our system.

These were all duties that I — when I first took them over that I had absolutely no — not much knowledge on. I was trained by a person in our group at that time.

Q. What exactly is the purpose of the Planning & Scheduling department? I mean
(21)

what was you-all's function? That is what I would like to see if you can tell me a little bit about.

A. I would say that we were very — our department was customer oriented. We provided information and data to all of the departments on the plant site.

Q. So what type of information and data did you-all provide?

A-33

A. Well, all of the information that was input on the LCIWAs —

Q. And the LC is what?

A. I mean, CIWAs. Well, it's the same thing. LCIWA and CIWA is the same thing. It's a work authorization.

Q. Oh, okay. So that's an acronym?

A. Yeah. Yes, it's an acronym. I'm sorry. We gave information on like the status of the plant, where things were, how things were progressing.

Q. Like projects?

A. Right.

Q. Maintenance projects and —

A. Right.

Q. — things like that?
(22)

A. We had multiple databases with different information in each one where we retrieved data. We had people that were getting reports on a routine basis that we had to get out. We were very customer oriented. I would say that we provided the plant with very much information.

Q. Would people call you-all and request information?

A. Yes, uh-huh (affirmative).

Q. Is that how it worked?

A. People would call and request information. We also had a book with routine reports that we ran routinely. We — reports that weren't run routinely were called — we would get call-in requests, and then we would do them upon request.

Q. Would you actually have to create a program to run a report?

A. No. Most of the programs were already set up when I was in Planning — when I went to Planning & Scheduling, they were all set up. So it was just learning the programs and learning to be able to retrieve the information.

(23)

Q. How long were you a computer operator?

A. I was a Computer Operator I, I believe, for two years, and then I was promoted to a Computer Operator II, I believe, for two years prior to the next promotion. But during the Computer Operator II phase, I was introduced to the report writing. So for a while, I was doing both. I was doing the computer operator work and the report — the ad hoc report writing.

Q. So the computer operator work you're talking about would be the same work —

A. Yes.

Q. — that you've just described?

A. Right.

Q. What was the report writing?

A. Report writing was — we had multiple report writers that we used. It was retrieving information out of different databases and getting out information to people that needed these reports.

Q. So people would call and say, "I need a report that will tell me this"?

A. Exactly.

(28)

you-all why he was promoting you-all to assistant scheduler?

A. I really don't remember exactly. I remember there were changes that were going on at the time in the plant, and I do believe that the organizational chart was going to be changed. And in order to secure — this may be a rumor. I'm just saying what I heard — in order to secure our positions, they made us — they promoted everybody in the group to assistant schedulers. And at that time we were all salaried employees.

Q. So you had gone from being an hourly employee as a Computer Operator II to a salaried employee as an

A-36

assistant scheduler?

A. Right.

Q. Did you have any understanding of what Mr. Rooney's expectations of you-all as assistant schedulers were?

A. At that particular time?

Q. Right.

A. I believe he generally told us what the job entailed, but I don't think we really went into any specifics. Because I think at that time a decision was being made,

(36)

ever talk to you about the ranking process?

A. Prior to the ranking?

Q. Right. Did you know it was coming out?

A. Yes.

Q. How did you learn that the ranking process was coming out?

A. Dave called a departmental meeting.

Q. Do you recall when this was?

A. I would say a couple of months before it happened; but to give you a specific date, no.

A-37

Q. Probably the fall of '94?

A. I would say late summer, early September. September, something like that. Really, I don't remember.

Q. Was everyone in the department at this meeting?

A. Yes.

Q. What was explained to you during the meeting?

A. Dave said that there was going to be a ranking process, that we were going to be ranked on potential and performance, that the

(37)

department would be ranked. We had 18 employees, I do believe, at that time, and the department was going to be ranked 1 to 18. And if you fell in the nine category that they were looking to — well, let me retract.

He said that — we were told at that time that 10 percent — I do believe that we were told 10 percent of the department would be ranked a nine. So in our department, that would mean that would be two people.

He didn't go into any specific details on — like he didn't break down how potential would be — how they would rank potential or rank performance. Basically, at that time we were just told that you would be ranked on performance and potential and that 10 percent of the people — 10 percent would fall in that category.

Q. Did he give you any understanding of what would happen if you fell into a nine category?

A. Not at that time.

Q. Do you recall approximately how long this meeting took place or how long the meeting was?

(42)

A. No.

Q. How did you first learn of your rank?

A. Jim and Dave called me in a meeting.

Q. Where was this meeting?

A. In one of the work rooms.

Q. Was anyone present other than you, Jim, and Dave?

A. No.

Q. What exactly was said during the meeting?

A. Jim called me in the — Jim did the meeting, and Jim said, "Dolores, you fell into the nine category."

He said, "I have this — this is your Action Plan. This is your package. I have a package to offer you." At that particular time, he opened a package, and he said that I would have a choice to — I mean, the package offered me a month administrative leave and a week for every year that I was there. Or my other option was to take an Action Plan.

So I asked Jim what was the Action Plan. Jim said, "An action Plan would be

(43)

written for you." Jim never alluded to the fact that I would have any input on that Action Plan. He said that the Action Plan would be very difficult for me to maintain. Jim said that because other people were in their same jobs and that I would be given a new Action Plan to do that he did not feel that I would — that I could do the Action Plan and better myself from a nine.

This was very upsetting to me. Can we take a break?

Q. Sure.

(Short break taken)

BY MS. MASINTER:

Q. At the meeting that you had, was this the first time you had really learned about the consequences of being a nine with regard to getting an Action Plan or getting a package?

A. I believe there was talk of a severance package being offered to these people, and I'm sure that there was talk about an Action Plan too.

Q. Was it official talk, or was it talk around the plant?

(44)

A. I can't remember that that was said at the meeting. Whether Dave said that or not, I really don't remember. But

there was definitely talk at the plant that that was going to be the course of action.

I would like to correct something that I said.

Q. Sure.

A. I said at the meeting I was given an Action Plan. I wasn't given an Action Plan. I was given my package.

Q. But he discussed the possibility of an Action Plan with you?

A. Yes. He said an Action Plan would be written for me.

Q. What did he tell you an Action Plan was, or did you have an understanding of what an Action Plan was?

A. He didn't go into any detail, and I didn't ask. He said that I would be evaluated probably either on a monthly or every two-month basis. He said that probably at that time I would be terminated. And I said, "You mean, I would be fired?"

And he said, "Yes."

(48)

actual documents. Do you recall what they handed you?

A. It was a letter, I think, from H.R. stating that I would get one month administrative leave and one month — and one week for every year of service.

Q. Was there anything else contained in — attached to the letter?

A. I don't remember.

Q. I'm going to show you a letter that is dated January 16, 1995. And it's signed by Richard Farizo.

A. Uh-huh (affirmative).

MS. MASINTER:

Would you please mark this as Oubre Exhibit 1. We're going to mark this instead of Oubre Exhibit 1 Defendant's Exhibit 1.

BY MS. MASINTER:

Q. Would you take a look at this letter and tell me if this is the letter you received, a copy of a letter you received on January 17 in your meeting with Dave and Jim (tenders)?
(49)

A. I believe so.

Q. If you look on page 2, the second paragraph talks about a release. Were you provided with a release at that meeting.

A. Yes.

MS. MASINTER:

Would you mark this as Defendant's Exhibit 2,

please.

BY MS. MASINTER:

Q. I'm going to hand you a copy of a document. It's marked "Release" at the top, and it appears to have your name filled in at the top, and it appears to be signed by you on January 31, 1995. Would you take a look at that and tell me if that appears to be a copy of the release you received (tenders)?

A. Yes.

Q. Do you recall whether you actually signed a release?

A. Yes.

Q. Does that appear to be a copy of your signature?

a. Yes.

Q. Other than this letter that is marked as Defendant's 1 and the release that

(50)

is marked as Defendant's 2, did you receive any other documents in connection with the package?

A. I don't believe.

Q. I'm going to show you a document that I'm not going to mark as an Exhibit. Actually, three documents, which appear to kind of calculate out the amount that you are

entitled to under the package of severance. Do you know if any of these documents were attached to your letter (tenders)?

A. This one was (indicating).

MS. MASINTER:

Would you mark this document as Defendant's Exhibit 3, please.

BY MS. MASINTER:

Q. I'm going to give you what has been marked as Defendant's Exhibit 3, and this appears to be a severance — it's titled a "Severance Work Sheet." And at the bottom it says total severance is \$6258.62. And you recall this document being attached to the letter?

A. Yes.

Q. Did you and Jim and Dave discuss
(52) other girls. That's the only thing he said.

Q. So other than hearing that your computer skills were not up to par, you don't have any understanding of what factored into your performance or potential rank?

A. No.

Q. When did you first sit down and read the whole contents of your severance package?

A. Probably that night when I got home. During the whole meeting, Jim held the severance package. I never — when the meeting ended, he put it — he opened — I mean, he put everything back into the folder and handed it to me. But during the meeting, I never had access to the package at all.

Q. How did your meeting with Jim and Dave end? Was it your understanding that you had time off to consider —

A. Jim — I mean, Dave told me, "Take a few days to make your decision, and let me know."

Q. Did he force you to take a few days or —

A. Oh, no. This was — I mean, he
(53)

could see that I was upset. So I took it for granted that he was doing this as a nice gesture.

Q. You never felt like he was penalizing you?

A. Oh, no, never.

Q. After you got home and took a look at the package, did you discuss it with anyone?

A. I had a friend come over that night because I was so upset and discussed it.

Q. Who was that?

A. James Bruce. I don't know that at that time we

discussed the package. I think I was just distraught, and he came over for support.

Q. What was your understanding of when you had to make a decision regarding whether you would take a package?

A. January 31st.

Q. So that would have been —

A. Two weeks.

Q. Two weeks?

A. (Witness nods head affirmatively.)

Q. When you got home, did you read
(54)
the letter and the release?

A. I'm sure I did.

Q. Did you understand the contents of the letter?

A. No.

Q. What didn't you understand about the letter?

A. I didn't understand anything about releases period.

Q. No, I'm not asking about the release. I'm just asking about the letter.

A-46

A. Oh, this letter, you mean (indicating)?

Q. Right.

A. Did I understand it?

Q. Did you understand that it was offering you a severance package?

A. Yes. Yes.

Q. Did you read it, the letter, thoroughly?

A. I'm sure at one point I read the letter thoroughly. To tell you I did it that particular night —

Q. At one point, did you read it thoroughly?

(55)

A. Yes. Yes.

Q. Did you read it more than once?

A. Of course.

Q. Was there anything in the letter that you had questions about?

A. There were, yes. I called Mike — yeah, Mike Brock.

Q. Who is Mike Brock?

A. He was H.R. I had questions concerning benefits.

A-47

I had questions concerning savings plan, a few — I don't remember offhand, but I did talk to Mike Brock to get some —

Q. Did he answer your questions?

A. Yes — to get some clarification.

Q. Did you understand from reading the letter that in order to take the severance plan you would have to sign a release?

A. Yes.

Q. Let's talk about the release. Did you actually sit down and read the release —

A. Yes.

Q. — when you received it? Did you have any questions about the release?

A. Yes.

(56)

Q. What questions did you have?

A. Well, I didn't know anything about releases, you know, and I didn't know — I didn't know if the information on here was correct. I didn't understand what the information was. I mean, you know, I just — this was something totally new to me, and I had absolutely no knowledge of releases. I had multiple questions.

Q. Did you subsequently come to some understanding of the effect of a release?

A. Yes.

Q. When was that?

A. After I sought legal advice.

Q. When was that?

A. Oh, God. Let me see. About a week after the meeting.

Q. So —

A. About January — let's just say the 24th. About a week after.

Q. So around January 24th, you sought legal advice to discuss the release?

A. Yes.

Q. At that point you came to some sort of understanding —

(58)

So on January 31, 1995, you notified Mr. Rooney that you were going to accept the package; is that correct?

A. I called Jim, and I told him that I had questions concerning the first meeting between he and Dave and I and could he please come — would he agree to meet with me before

I gave him a decision. He said, yes.

Q. When did you go and meet with him?

A. That day.

Q. What happened at that meeting?

A. I wanted to make sure that I clearly understood what was being told to me during that first meeting; so I — well, first, I started the meeting by asking Jim to explain — I said the Get Well Program, which I meant the Action Plan. And Jim got off on a tangent trying to explain the Get Well Program to me.

The Get Well Program was a program used before the Action Plan. And he went on to explain that, and then I said, "Jim, I really meant to say the Action Plan." So then he went on to — not really explain but to say once again that an Action Plan would be

(59)

written, still not telling me that I would have any input on this program for me, that — he once again reiterated that in a month or two months I would be reevaluated on how I was progressing, rated against the employees in my department, 1 through 18.

I said to Jim at that time, "Jim I have worked for you for too long" — let me explain something to you. Jim was more than a boss to me. Jim was my friend. And I believed Jim. When Jim said something to me, his word I honored. I believed him.

I said, "I worked for you too long, and we've been friends for too long for you to sit here and lie to me. I need you to be honest with me and tell me what my chances are on this program."

Jim said, "Do, your chances are not good at all," he said, because you're staying in the same position." He even went on to say, "If you were moving to another spot on site, your chances would be much better." That wasn't an option. Moving to another site wasn't an option.

(60) So he said, "If I'm to be honest with you, your chances are not good."

I said, "Jim, in the first meeting, it was said to me that after my first evaluation, which would be a month or two months, I would probably be terminated."

He kind of reneged on that, and he said, "Well I can't exactly say it would be a month or two months, but your chances of making a year would not be good." And he went on to say again that it was because I would be rated with the employees doing their same jobs, and I would be trying to work on a very difficult Action Plan.

He stressed that the Action Plan would be very difficult and that — so then I said to Dave — to Jim, I said, "Well, Dave said in the last meeting that my chances of moving from a nine to another category were little or nothing." And I said, "How do you feel about that?" And he said it would be very difficult to move into another category

based on the same reasons that he had given me before.

Q. Did you feel that Jim was being honest with you when he was having this conversation?

(61)

A. Yes.

Q. What happened next at the meeting?

A. We discussed — I believe that's all. And then I said I was ready to sign the release.

Q. And just you and Jim were at the meeting?

A. This was Jim and I at that meeting, yeah. Like I said, I just wanted him to — I just wanted to hear the same things that I had heard in the first meeting to make sure that I understood exactly what was being told to me again.

Q. And you signed the release in the presence of Mr. Rooney?

A. Yes.

Q. Did you watch him sign the release as a witness; do you know? It appears to be his signature down here as a witness.

A. Yes, that's his signature.

Q. Did you watch him sign it?

A. I guess I did, but I don't remember at this point. We were the only two in the room.

Q. Who was the attorney you spoke to
(63)

A. He's in Vacherie, Louisiana. And the second attorney was Bernadette Lee.

Q. Where is she?

A. Poydras.

Q. That name sounds familiar. Okay. Did Entergy pay you in accordance with the severance plan that you had elected to take?

A. Yes.

Q. Did they pay all moneys that they owed you under that?

A. Yes.

Q. Do you know when your — you began receiving money?

A. February.

Q. Do you know when you received your last check?

A. June 6th.

Q. That would be 1995?

A. Yes.

Q. At any point have you even attempted to return any of the money you received pursuant to the severance plan to Entergy?

A. I was not aware that I had to return any moneys to Entergy. No, I did not

(64)

return any moneys to Entergy.

Q. Did you ever attempt to return any money and was refused?

A. No.

Q. I'm going to ask the court reporter to mark the complaint that you filed in this lawsuit as Defendant's 4.

I'm going to show you a copy of your complaint that was filed by your attorney, Ms. Haynie, not your other attorneys, in this lawsuit. And I just want to ask you some questions about it.

Actually, before we talk about the complaint, I want to ask you one other thing. You filed a charge of discrimination with the EEOC, didn't you?

A. Yes.

A-54

Q. At any time did you discuss with the EEOC the release?

A. I don't believe.

Q. Let's go back to the complaint. In your complaint, you allege basically that you were constructively discharged, or you felt like you had no option other than to quit your job, and you allege that you believe that

(80)

just devastated, and I couldn't handle it.

Q. Did you quit Ochsner?

A. Yes.

Q. Do you recall what your income was on your 1994 income tax return?

A. '94?

Q. Yes. Wait. When did you sign this? '95. I'm confused. My years are confused. Your 1995 income tax return.

MS. HAYNIE:

The one you just filed.

THE WITNESS:

Yes. I don't remember. Twenty-one, maybe. I don't remember. I recall '94.

A-55

BY MS. MASINTER:

Q. Don't worry about '94. Did you receive unemployment compensation?

A. No.

Q. When did you decide to sue Entergy?

A. When?

Q. Yes.

A. Right after.

Q. Right after?

(81)

A. (Witness nods head affirmatively.) I guess when I sought legal advice.

Q. From the first two lawyers?

A. Yes.

Q. When did you find Ms. Haynie?

A. August of last year, I think.

Q. How did you find her?

A. Through another attorney.

Q. Did you give her a copy of your release?

A. I believe so.

(Short break taken.)

BY MS. MASINTER:

Q. Could you just run down for me where you have received income for the year 1995, where you have worked during 1995 since you left Entergy?

A. Ochsner for three weeks and Browne-McHardy Clinic for four months maybe, and that's it.

Q. How much were you making at Browne-McHardy Clinic?

A. Seven.

Q. The attorney that referred you to
(88)
expertise on than any of the — the rest of the girls in the office.

Q. And the reason she had that expertise is because she was working with it more so than the others?

A. She had been tasked with it, right. Exactly.

Q. Let's look at the exhibits that are going to be attached to your deposition. Exhibit No. 1 is a letter dated January 16, 1995. In the first sentence of that letter, it indicate, "A Ranking Voluntary Severance Option has been approved and is now being offered to you." Do you believe

that the severance option was voluntary?

A. I don't believe that I had an option.

Q. Why do you feel you didn't have an option?

A. Because of what was told to me by Dave and Jim in our meetings.

Q. On page 2, in the second paragraph, the last sentence of that paragraph states, "If you do not elect the Voluntary Severance, an Action Plan will be developed

(89)

and you will be given the opportunity to improve your Ranking." Was that your understanding with regard to the Action Plan and how it would work?

A. No. It's quite contradictory, because they told me there was very little chance of improving that ranking, if any at all.

Q. How long were you given to contemplate whether you were going to take the severance package or stay with the company?

A. The meeting — the first meeting was on January 17th, and I was told I had to give a decision by the 31st.

Q. So two weeks?

A. Yes.

Q. Was that a big decision for you to make in a two-week time period?

A. Of course.

Q. Why? Why was it in your particular case?

A. Because I'm single. I'm sole supporter of myself. I knew that I was never going to go out into the work force and find a job making the money that I was making there.
(90)

I knew that I would have to start over from the bottom again. It was devastating to me. I was worried about medical benefits because I had a medical problem.

Q. Were you surprised to find out that you were ranked a nine?

A. Yes.

Q. Why did that come as a surprise to you?

A. Because of statements that had been told to me, statements in a meeting that we had — not "we" but in a meeting that Dave had with Stacy one day at her desk to explain — Stacy asked Dave to explain the ranking process to her, which I was not privy to. This was told to me. That she wanted to understand how it would work.

And so Dave drew the three tiers on the board; one, two, three, four, five, six, seven, eight, nine. He explained to her how everybody would be ranked in performance and

potential. And at that time Stacy stated that Dave told her that the assistant schedulers would fall in the five and six category because of our potential, our high potential,

(92)

A. No.

Q. How were you paid?

A. Regular salary, regular two-week salary.

Q. So you received a check every two weeks?

A. Yes.

Q. And I believe you indicated that this provided you with approximately 3 1/2 or four months worth of salary?

A. Yes.

Q. What did you do with that money?

A. That was my living expenses.

Q. You paid your bills?

A. Sure.

Q. Of any of that money, could you put any of it into savings?

A. No.

Q. Now, you heard Ms. Masinter allude to paying back any money to the company. Do you have any understanding of what she was talking about with regard to tendering back any money to the company?

A. No.

Q. If you were to learn that for the
(93)

release that you were told by your previous attorney that it was invalid — that you had ratified it by keeping the money that you were given from the severance package and to undo that you would have to tender back money to the company, would you tender back money to the company to pursue a lawsuit?

A. You mean, I would have to give back the \$6,258?

Q. Right, if those were the circumstances.

A. I have \$6258. I would have to think long and hard on that, because the salary that I'm working with now is basically half of the salary that I was working with when I left Entergy. What is in my savings — I don't bring home enough money to pay all of my bills. I have to take money from my savings every month just to meet everything that I need. And that would be a very hard decision. I would have to think really hard. I would have to weigh the consequences.

Q. At any time during the discussion with Mr. Shipman or Mr. Rooney regarding your option in the Action Plan or the severance

APPENDIX H

RELEASE

I, Dolores M. Dubre, knowingly, voluntarily, and for
(Employee name)

valuable consideration agree to waive, settle, release, and discharge any and all claims, demands, damages, actions, or causes of action occurring on or before the date of the execution of this Release, whether known or hereafter discovered, that I may have against Entergy Operations Inc., its parent corporation, subsidiaries, affiliates, officers, directors, employees, agents, and legal representatives and their respective successors, heirs, and assigns ("the Company"), which in any way relate to my employment by or my separation from the Company.

I acknowledge that I was provided with a copy of this Release, that I was advised to discuss this Release with my lawyer, and that I was given no less than 14 days within which to consider signing this Release. I have thoroughly reviewed this Release and understand that, to the extent I have any claims covered by this Release, I am waiving potentially valuable rights by signing below. My execution of this Release is free and voluntary and was not procured through duress, coercion, or undue influence.

I UNDERSTAND, ACKNOWLEDGE, AND AGREE THAT BY SIGNING THIS RELEASE, I AM OBTAINING ADDITIONAL MONIES AND BENEFITS FROM THE COMPANY IN THE FORM OF A VOLUNTARY SEVERANCE PACKAGE TO WHICH I WOULD NOT BE OTHERWISE ENTITLED. I UNDERSTAND,

A-62

ACKNOWLEDGE, AND AGREE TO ALL THE TERMS OF
THIS AGREEMENT.

This 31 day of Jan., 1995.

WITNESS:

/s/ James P. Rooney, Jr.

By: /s/ D M Oubre

Dolores M. Oubre

EXHIBIT D to it's Opposition to A's Motion for Summary
Judgment filed into the District Court Proceedings.